LIBRARY
SUPREME COURT U. S.
FILED
JAN 14 1974
JOSEPH F. SPANIOL, JR., CLERK

IN THE

# Supreme Court of the United States

October Term, 1973
No. 73-884

DELORES MENDOZA, *et al.*,

*Petitioners,*

*vs.*

UNITED FARM WORKERS ORGANIZING COMMITTEE,

*Respondents.*

## REPLY BRIEF OF PETITIONERS.

JONATHAN C. GIBSON,
REX H. REED,
JOHN L. KILCULLEN,
RICHARD B. ISHAM,
1212 Home Tower,
707 Broadway,
San Diego, Calif. 92101,
*Counsel for Petitioners.*

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

## SUBJECT INDEX


I — Page

Arguments in Respondents' Statement of the Case Are Unfounded ..... 1

II

Court Below Applied a Test of Compulsion of State Law ..... 2

III

Respondents Compelled the Union Shop, but the State Authorized, Approved, Encouraged and Protected Its Action ..... 3

IV

Hanson Case Demonstrates Governmental Action Here ..... 5

V

Hanson Rule Recognized in Subsequent Cases ..... 5

VI

Important Constitutional and Public Questions Are Stated ..... 7

Conclusion ..... 8

## TABLE OF AUTHORITIES CITED


| Cases | Page |
|---|---|
| Adickes v. Kress & Co., 398 U.S. 143 (1970) | 3 |
| Bell v. Hood, 327 U.S. 678 | 7 |
| Chavez v. Sargent, 52 Cal. 2d 162 (1959) | 4 |
| Conley v. Gibson, 355 U.S. 41 (1957) | 7 |
| Herbert v. Louisiana, 272 U.S. 312 (1926) | 4 |
| Lathrop v. Donohue, 367 U.S. 820 (1961) | 7 |
| Marshall v. Sawyer, 301 F. 2d 639 (C.A. 9, 1962) | 4 |
| Minnesota Ex rel. Pearson v. Probate Court, 309 U.S. 270 (1940) | 4 |
| Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972) | 5, 6 |
| NAACP v. Button, 371 U.S. 415 (1963) | 4 |
| Parkinson Co. v. Building Trades Council, 154 Cal. 581 (1908) | 4 |
| Pierce v. Stabelemen's Union, 156 Cal. 70 (1909) | 4 |
| Railway Employees' Dept. AFL v. Hanson, 351 U.S. 225 (1956) | 2, 5, 6, 7, 8 |
| Reitman v. Mulkey, 387 U.S. 369 (1967) | 5, 6 |
| Retail Clerks Union v. Superior Court, 52 Cal. 2d 222 (1959) | 4 |
| Robinson v. Florida, 378 U.S. 153 (1964) | 6 |
| Stephenson v. City of Palm Springs, 52 Cal. 2d 407 (1959) | 4 |

| Statutes | Page |
|---|---|
| United States Code, Title 29, Sec. 158(a)(3) ..... | 2 |
| United States Code, Title 45, Sec. 152, Eleventh .. | 2 |
| United States Constitution, Fourteenth Amendment ..... | 6 |

| Textbook | |
|---|---|
| 114 American Law Reports 161, s 151 ALR 617 .. | 7 |

IN THE

# Supreme Court of the United States

October Term, 1973
No. 73-884

DELORES MENDOZA, *et al.*,

*Petitioners,*

*vs.*

UNITED FARM WORKERS ORGANIZING COMMITTEE,

*Respondents.*

## REPLY BRIEF OF PETITIONERS.

### I

### Arguments in Respondents' Statement of the Case Are Unfounded.

Petitioners will endeavor to reply to two of the three arguments made by respondents in their statement of the case. The third begs the principal question at issue.

1. The contract in question requires full union membership by providing as set forth in the complaint "union membership shall be a condition of employment. Each worker shall be required to become a member of union * * *. Any worker who fails to become a member of union * * * shall be immediately discharged * * *." [R 4.]

The broad requirements of the contract here thus sharply contrast with the restricted or limited form of

membership permitted by the National Labor Relations Act, 29 U.S.C. § 158(a)(3), and by the Railway Labor Act, 45 U.S.C. § 152, Eleventh. The constitutionality of the latter statute was upheld in *Railway Employees' Dept. AFL v. Hanson,* 351 U.S. 225 (1956) on the ground that it imposed no requirement other than the payment of compensation to the union for its service as collective bargaining representative.

2. Petitioners' reference to the coercive effect of the union boycott is based upon respondents' representation to the District Court, which discloses the larger area of respondents' coercion:

> "[D]efendant union was compelled to secure * * * unionization of the table grape industry by resort to * * * table grape boycott * * *. Because of the success of the grape boycott * * * defendant growers * * * decided to sue for peace and negotiate a collective bargaining agreement with defendant union * * *." [R 31, 32.]

## II

## Court Below Applied a Test of Compulsion of State Law.

Contrary to respondents' "fair reading", the whole basis of the opinion of the Court of Appeal is its holding that compulsion of state law is essential to the existence of governmental action in a union shop agreement between private parties.

Thus the Court said:

> "The complaint does not specify any causative or coercive involvement of the state * * *." (P. 9.)

The Court incorrectly cited *Adickes v. Kress & Co.*, 398 U.S. 143 (1970) as holding:

> "In order to convert such ordinary private action into state action * * * there must be some 'compulsion of state law' ". (P. 10.)

The Court below then concluded its brief opinion by declaring:

> "The present complaint does not allege * * * any compulsion of California law * * *. Nothing in California law * * * coerces parties to include union shop provisions in a labor contract. In these circumstances we agree with the District Court that the complaint was inadequate." (P. 10.)

Plainly the Court held that there could be no governmental action unless the State compelled the union shop. Equally plainly this was to base the decision on an erroneous statement of the law.

## III

## Respondents Compelled the Union Shop, but the State Authorized, Approved, Encouraged and Protected Its Action.

Three parties are affected by this union shop agreement: (1) the union, (2) the employers, and (3) the employees. The union was the only one of the three acting voluntarily. The employers as well as the employees were the object of coercion. The suit here was brought by the petitioning employees complaining that they are being conscripted against their will into a private organization. They invoked the protection of the Federal Constitution because they are being deprived of rights under it by a union shop in which California is significantly involved.

The Supreme Court of California many years ago interpreted the common law of the State as legalizing the union shop. *Parkinson Co. v. Building Trades Council,* 154 Cal. 581 (1908); *Pierce v. Stabelemen's Union,* 156 Cal. 70 (1909). After the enactment in 1933 of the provisions of the Labor Code dealing with the union shop and the closed shop, the State Court held that those arrangements were authorized, approved, encouraged and protected, thus going significantly further than the Court had gone in construing the common law. *Stephenson v. City of Palm Springs,* 52 Cal. 2d 407, 410 (1959); *Chavez v. Sargent,* 52 Cal. 2d 162, 196, 197 (1959); *Retail Clerks Union v. Superior Court,* 52 Cal. 2d 222, 226-228 (1959). What the highest Court of the State did in construing those statutes and whether what it did constitutes governmental action sufficient to invoke the protection of the Constitution of the United States are questions of federal law under which the meaning of the State's statute must be read as the highest court of the state has interpreted it. *NAACP v. Button,* 371 U.S. 415, 432 (1963); *Minnesota Ex rel. Pearson v. Probate Court,* 309 U.S. 270, 273 (1940); *Herbert v. Louisiana,* 272 U.S. 312, 317 (1926); *Marshall v. Sawyer,* 301 F. 2d 639, 646 (C.A. 9, 1962).

In *Minnesota Ex rel. Pearson v. Probate Court, supra,* Chief Justice Hughes declared:

> "For the purpose of deciding the constitutional questions appellant raises we must take the statute as though it read precisely as the highest court of the state has interpreted it." (309 U.S. at 273.)

Under this rule the provisions of the State Labor Code relied upon by the Supreme Court of California must be read as authorizing, approving, encouraging and pro-

tecting the union shop. They constitute significant, substantial and sufficient state action to invoke the protection of the Federal Constitution.

## IV

## Hanson Case Demonstrates Governmental Action Here.

In *Railway Employees' Dept. AFL v. Hanson, supra,* 351 U.S. 225 (1956) the statute occupied the whole field in the railroad and airline industries with a uniform rule applicable throughout the country authorizing a limited and restricted form of union shop. It not only struck down conflicting state right to work laws then existing but also rendered all of the states powerless to enact similar laws in the future. This statute expressly authorized a form of union shop unknown to the common law, and set forth a detailed pattern to be observed in its administration.

This Court in *Hanson* construed the statute there as leaving the union and the employer free, as under California law they are free here, either to make or not to make such an agreement, saying that the statute is only permissive and Congress has not compelled nor required carriers and employees to enter into union shop agreements (351 U.S. at 232). It nevertheless went on to hold governmental action to be present (351 U.S. at 232).

## V

## Hanson Rule Recognized in Subsequent Cases.

The respondent is in error in urging that the decision of this Court in *Moose Lodge No. 107 v. Irvis,* 407 U.S. 163 (1972) rules out the presence of governmental action here. The Court there cited *Reitman v. Mulkey,* 387 U.S. 369 (1967), as holding that where the impetus is private, the state must have significantly

involved itself in the action for it to fall within the ambit of the constitutional prohibition. The significant involvement in *Reitman* consisted of state authorization, encouragement and assistance of discrimination by private parties; and it was held to constitute governmental involvement sufficient to invoke protection of the Federal Constitution. In *Moose Lodge* the Court after citing *Reitman* said in a way signifying approval of the two decisions as both right and consistent with one another, ascerting:

> "However detailed this type of regulation [in Moose Lodge] may be in some particulars, it cannot be said in any way to foster and encourage racial discrimination". (407 U.S. at 176, 177.)

Other statements of the court are to the same effect. (407 U.S. at 173, 175, 176.).

These passages in the opinion in *Moose Lodge* show that respondents are on infirm ground in regarding that case as departing from *Hanson* and from *Reitman* in their holding that governmental action is present where the state has authorized, encouraged and assisted the acts of which complaint is made.

In *Robinson v. Florida,* 378 U.S. 153 (1964), a group of blacks and whites were convicted in a Florida state court for violating a Florida statute by remaining in a restaurant after the manager had requested them to leave. This Court reversed, holding that the conviction violated the Equal Protection Clause of the Fourteenth Amendment in view of the fact that the State, through its regulations requiring separate washroom facilities for each race, whether employed or served in a restaurant, had become involved to a significant extent in bringing about restaurant segregation. The State neither commanded nor authorized the seg-

regation, but it placed a burden through its regulations on the service of patrons of both races on equal terms.

## VI

## Important Constitutional and Public Questions Are Stated.

*First:* The complaint at bar raises most of the constitutional issues reserved in *Hanson* as well as in *Street*, 367 U.S. 740, 748, 749 (1961), where as here, petitioners sought recovery for infringement of the Bill of Rights of the Federal Constitution. In view of the allegation, it was the duty of the District Court to entertain the suit and to permit petitioners to present their evidence. *Bell v. Hood*, 327 U.S. 678, 683-685; *Conley v. Gibson*, 355 U.S. 41, 45, 46 (1957). This Court in the latter case declared:

> "In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

*Second:* There is little analogy between a compulsory union shop and an integrated bar. Mr. Justice Douglas, who made the analogy in *Hanson*, later commented: "But on reflection the analogy fails." *Lathrop v. Donohue*, 367 U.S. 820, 879 (1961). The integrated bar is usually a governmental agency, operating under the Supreme Court of the State in the advancement of the science of jurisprudence, in fostering the continuing legal education of bar, as well as in exercising some functions in connection with complaints against lawyers. Annotation, 114 ALR 161, s 151 ALR 617. The union under the collective bargaining agreement

exercises powers over the employee far beyond any control asserted by an integrated bar over a lawyer. This agreement, and state laws take away a large part of the right of the worker to contract for his own employment and transfers it to the union as collective bargaining representative. The union may call the employee out on strike and punish him for crossing the picket line to go back to work. It may require conformity with other provisions of its constitution, by-laws, rules and regulations, as well as provisions of the collective bargaining agreement, such as those involved here.

*Third:* The attack here is not as respondents imply on the union as such, but on its state-aided abuse of power by conscripting unwilling employees as full union members. *Hanson* is no authority for that or for anything other than the right of the Congress to authorize an agreement to require the employee to compensate the union for its services as collective bargaining representative. Respondents have done far more here than to require such compensation.

**Conclusion.**

It is respectfully submitted that the respondents have shown nothing which should dissuade this Court from issuing its Writ of Certiorari to the Court of Appeals for the Ninth Circuit in this case.

Dated: January 11, 1974.

Respectfully submitted,

JONATHAN C. GIBSON,
REX H. REED,
JOHN L. KILCULLEN,
RICHARD B. ISHAM,
*Counsel for Petitioners.*